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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/542,392	04/04/2000	Fazal Sved Raheman		6230
7590	02/02/2005		EXAMINER	
			BAYERL, RAYMOND J	
			ART UNIT	PAPER NUMBER
			2173	

DATE MAILED: 02/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/542,392	RAHEMAN, FAZAL SVED
	Examiner Raymond J. Bayerl	Art Unit 2173

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 13 October 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 249 - 268 is/are pending in the application.
- 4a) Of the above claim(s) 257 - 258, 267 - 268 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 249 - 256, 259 - 266 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 04 April 2000 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>plural, 2000-2002</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

1. The drawings are objected to because there is no reference numeral 52, as described at page 11, lines 19 - 21. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. Claims 249 – 256, 259 – 266 are objected to because of the following informalities: in claim 249, please note “aliened to the substrate” (aligned?), at line 2. Also, in claim 259, it appears that applicant had intended “, and” instead of the first instance of “.”, at the end of step “g)” and before step “h)”. Appropriate correction is required.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 249 – 256, 259 – 266 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Initially, it is unclear what applicant intends to be the invention, in claiming a “program product and method of creating...” (independent claims 249, 259). Is it the product, or is it instead the method? An amalgamation of both in a single statement of invention is not a particularly pointed-out embodiment. The Examiner notes that dependent claims 250 – 256, 260 – 266 are each directed simply to a “method”, rendering further uncertain what applicant is truly intending.

In claim 251, the limitation “such as a Word Processor or a Web browser” is indefinite—what else can be included, in the set of “applications” that are “such as” these two? A similar problem exists in claim 261.

In claim 253, the phrase “such menus, tools, controls and other information” lacks clear antecedent basis—where had something previously been mentioned that could be referred back to in this manner? See also claim 263. A similar problem further exists with “such floating window” at claims 255, 265.

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 249 – 256, 259 – 266 are also rejected under 35 U.S.C. 101 because they are not limited to one of the 4 statutory classes of invention. This is a problem arising from the phrase “computer program product and method of creating”. Please note that 35 USC 101 only holds as statutory a “process, machine, manufacture, **or** composition of matter”, and not a combination thereof.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 249 – 256, 259 – 266 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferguson (“Ferguson”; US #2002/0178232 A1) in view of Wilks et al. (“Wilks”; US #6,246,407 B1).

As per the "graphics user interface based computer program product and method of creating one or more floating windows" in independent claim 249, Ferguson, in the BACKGROUND DOWNLOADING OF INFORMATION FROM A COMPUTER NETWORK, has an interface which displays itself in accompaniment with known Web browser software (Abstract; fig 5). This interface is exemplified by the Q-link tool, as seen in figs 13, 15 and summarized at paragraph [0005]: the interface of the invention floats above the browser, and it presents itself as a unique and premium location for advertising. Thus, in Ferguson, "one or more floating windows" are, "by permanent default", "anchored or aliened (sic) to the substrate or document areas of the integrated or an unrelated software application". The "software application" in this case is the browser 62 (see paragraphs [0054] – [0058]), and its "substrate" "areas" are those portions of the Ferguson interface that are accessory to the main client area. Please note in fig 12 of Ferguson that the Q-link interface is located above such a secondary portion of the overall browser window. Also, since the interface containing their messages remains in the view of all users at all times, it "cannot be closed, moved, manipulated, interacted or unfocused, in any other way than defined by the sponsor".

Ferguson, admittedly, teaches a completely opaque "floating window" tool, and thus, not one "allowing automatic cursor-responsive access to the hidden/invisible controls tools and any such information masked by such window". However, it was known in the art to provide a window overlay that still allows the user to access that which is underneath, but without it being

completely "closed, ... unfocused". By OVERLAYING A WINDOW WITH A MULTI-STATE WINDOW, Wilks discloses that [w]hen a user input is received in the overlapped portion, a multi-state window driver associated with the multi-state window will provide the input to the overlaid window (Abstract). The window may exist in the two states shown in figs 1 (translucent) and 2 (opaque), but it is never completely defocused or closed.

Thus, it would have been obvious to a person having ordinary skill in the art at the time of applicant's invention to modify the Q-link scheme of Ferguson, by which sponsor data files are read out in conjunction with a browser, so as to be "non-obtrusive" in the style of Wilks, where the multi-state window overlay allows for access despite its being in place. The motivation rests in Ferguson, whose interface would be best tolerated by the user of the browser if it could be readily opened to allow access to the window regions below, as is permitted by Wilks.

As per claim 250 (see also claim 260), the "document area" in the Ferguson browser, as seen in fig 12, occupies somewhere between "60 to 80 percent of the application window", with the "substrate" thus occupying between "20 to 40 percent" by definition. The Q-link "messages" then "comprise part or all of the substrate areas".

Claim 251's limitation upon the "program algorithm"s association has the form "either...or...or...", so that an example of any of the 3 ways will meet the claim in the prior art. In the instant case, and as noted above, the Ferguson interface is "integrated into...a Web browser". See also claim 261.

Claim 252 (and also claim 262) speak to the matter of presenting "the menus, controls, tools and any other information masked by the floating window". In the instant analysis, these read upon Ferguson's overlaid "substrate" controls. In the modification as per Wilks, the multi-state window can be seen as creating "replicas" of the items normally accessible beneath the "non-obtrusive" window. As noted at col 3, line 52 – col 4, line 17, the multi-state window driver 44 causes the input message to be routed to the window driver of the overlaid window that is in focus. That is, the ordinary window driver has made for it a "replica" in the form of the driver 44-mediated control.

As specifically per claims 252, 262, while the Ferguson interface is clearly derived of a web site that supports it, and which would obviously direct the Wilks multi-state window if so equipped, this combination does not **explicitly** teach that the "replicas" are produced by an "embedded Java applet or DHTML form in any part of the document area".

However, it would have been further obvious to the person having ordinary skill in the art to use these industry-standard tools in the kind of download that is contemplated in enacting the Ferguson interface. The motivation rests in the Ferguson developer's intimate association with such technology as a Web promoter, and the need for platform independence when possible in establishing a tool like Q-link.

Claim 253 (see also claim 263) recites that "menus, tools, controls and other information" of the kind described with respect to claim 252 "are compiled in the sponsor message window itself" and "can be swapped with the application

in focus" responsive "to a mouse click". However, when Ferguson is given the multi-state window driver capability of Wilks, it is true that the "sponsor message window" (e.g., the "floating" overlay containing Ferguson's Q-link) provides the driver 44 solution to the problem of accessing the overlaid windows, and thus, the illustration for selection of the tools that are there.

As per claim 254 (and also claim 264), please note that the Wilks multi-state window is shown in conjunction with "more than one" of the "applications installed on the client machine".

Claim 255 (see also claim 265) recites that the "floating window displays and auto updates the display, by auto retrieving substitute files...by downloading the corresponding files from predefined web site URL". However, this is the procedure used for updating the Ferguson overlay tool: the ad display area 247 displays ads in 2-minute rotation from the Invention Web Server 302 (see paragraph [0189]).

As per claim 256 (and also claim 266), the Q-link tool of Ferguson is reasonably interpretable as a "floating window" that is also "a Web page", on account of its Web-based origin. It is delivered, originally, "in response to a specific URL request by the client", in establishing the service.

Independent claim 259 is a somewhat more detailed recitation of the "program product and method of creating one or more floating windows" in claim 249, whose obviousness from Ferguson and Wilks is discussed above. Points of distinction worth mentioning are as follows: Ferguson teaches that the "window" is "outside the document display or data input area...but within the outer limits of

such application" (item "a")). Focus is "simultaneous" with the browser (item "c")), and is a "permanent default" of the browser (item "d")). It "disappears, swaps or moves to another location exposing the menus, controls, tools etc. in the substrate area instantly as the user approaches" (item "f")), when Ferguson is taken in conjunction with Wilks, where the multi-state window driver is initially seen with the opaque state and is made into the translucent when the user wants to access what is underneath the window (see Wilks, col 4, lines 18 – 37). The Ferguson overlay, being "Web compliant" in its "format" (to accept the ad display) has sponsor content that "can be accessed for full view display", simply by the user making "a keyboard command" entry within the dialog region (item "g")).

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The remaining prior art documents cited (see attached form PTO 892) relate to the matter of window overlays, in ways deemed relevant to the problem of working with one application region that is overlapped by another.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond J. Bayerl whose telephone number is (571) 272-4045. The examiner can normally be reached on M - F from 9:00 AM to 4:00 PM ET.

11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cabeca, can be reached on (571) 272-4048. All patent application related correspondence transmitted by FAX **must be directed** to the central FAX number (703) 872-9306.

12. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2100.



RAYMOND J. BAYERL
PRIMARY EXAMINER
ART UNIT 2173

26 January 2005